

this proceeding that summarized the topics discussed. Then, in order to learn the views of interested parties, our staff conducted a public forum on conditions on May 6, 1999⁶⁶² at which numerous citizens, representatives of citizen groups, and industry members spoke. The staff also met extensively, in individual sessions, with dozens of individuals, groups and firms, both before and after the Applicants placed on the public record, for full public commentary, an initial version of their supplemental proffered conditions.

352. The success of these "open negotiation" procedures is, we think, evident from the Applicants' supplemental proffer of conditions. A comparison between the Applicants' initial proposed conditions, filed on July 1, 1999, and the contents of the May 6th public forum and the reports of Commission staff's early *ex parte* meetings with consumer representatives and industry participants evidence how substantially the public input influenced those proposals. When compared with their July filing, the Applicants' subsequent proffers show on their face that public input substantially altered and shaped the Applicants' final proposal.

353. Having explained why the staff engaged in discussions over conditions and why the staff operated in an "open negotiation" process designed to permit constructive bargaining, we turn now to a description of the conditions voluntarily submitted by SBC and Ameritech in their final joint supplement to their initial Application. Subsequently, we explain why we have decided to accept these voluntary conditions, and to approve the proposed merger subject to those conditions.

B. Adopted Conditions

354. We adopt, with some modification, the proffered commitments of SBC and Ameritech as express conditions of our approval of the transfer of licenses and lines from Ameritech to SBC.⁶⁶³ For the reasons set forth below, we conclude that, assuming the Applicants' ongoing compliance with these conditions, SBC and Ameritech have demonstrated that their proposed transaction, on balance, will serve the public interest, convenience and necessity. We summarize these conditions below.

355. As indicated below, these conditions are designed to accomplish five primary public interest goals: (a) promoting equitable and efficient advanced services deployment; (b) ensuring open local markets; (c) fostering out-of-territory competition; (d) improving residential phone service; and (e) ensuring compliance with and enforcement of the conditions. These goals flow from our statutory objectives to open all telecommunications markets to competition, to promote rapid deployment of advanced services, and to ensure that the public has access to

⁶⁶² We note that in addition to this forum on conditions, the Commission held three earlier public forums addressing more generic policy matters associated with mergers. See *supra* at Section III.B.3 (Commission Review).

⁶⁶³ The specific conditions that we adopt in this merger proceeding are set forth in Appendix C to this Order. In order to provide guidance to the industry on particular interpretive issues, as well as to facilitate implementation and enforcement of the conditions, in some instances we have annotated SBC/Ameritech's proffered conditions with explanatory footnotes that further reflect and clarify the intent of the particular condition.

efficient, high-quality telecommunications services. Achieving these goals will also serve to ameliorate the potential public interest harms of the transaction described above.

356. Even though some of the conditions may relate to other requirements that SBC and Ameritech are or will be subject to under the Act or our rules, the conditions that we adopt in this merger proceeding are not intended to prejudge, or override, Commission action in other proceedings. The Commission may, for example, adopt additional requirements in other more general proceedings that affect matters addressed by these conditions. In that case, because the conditions are intended to be a floor and not a ceiling, SBC and Ameritech would be subject to the general requirements as well as these conditions. We emphasize that the merged firm must comply with any applicable Commission orders or rules in addition to the requirements of these conditions.⁶⁶⁴

357. Nor are the conditions that we adopt today intended to be considered as an interpretation of sections of the Communications Act, especially sections 251, 252, 271 and 272, or the Commission's rules, or any other federal statute including the antitrust laws. The conditions are designed to address potential public interest harms specific to the merger of the Applicants, not the general obligations of incumbent LECs or the criteria for BOC entry into the interLATA services market. For example, the structure of the separate advanced services affiliate that is required under the conditions would not be adequate for SBC/Ameritech's provision of in-region, interLATA services following section 271 authorization.⁶⁶⁵ Similarly, the Carrier-to-Carrier Performance Plan is not meant to substitute for any enforcement mechanisms that the Commission may adopt in the section 271 context (*i.e.*, anti-backsliding measures), nor substitute for state performance measure plans. All of the conditions that we adopt today are merger-specific and not determinative of the obligations imposed by the Act or our rules on SBC, Ameritech or any other telecommunications carrier. In particular, we note that our adoption of SBC/Ameritech's proposed conditions does not signify that, by complying with these conditions, SBC/Ameritech will satisfy its nondiscrimination obligations under the Act or Commission rules.

358. The conditions are also not intended to limit the authority of state commissions to impose or enforce requirements that go beyond those adopted in this Order. Because these conditions serve as a baseline, the Applicants must abide by any applicable state rules, even if those rules address matters that are included within these conditions, unless the merged entity would violate one of these conditions by following the state rule.⁶⁶⁶ We do not preclude states from imposing additional rules, regulations, programs or policies that are not inconsistent with these conditions. As discussed below, however, to the extent that a requirement in these

⁶⁶⁴ If SBC/Ameritech is unable to comply simultaneously with both the requirements of any condition and the requirements of any Commission rule or order, it must so inform the Commission and seek guidance as to how it should proceed.

⁶⁶⁵ SBC/Ameritech must comply fully with all section 272 requirements to provide in-region, interLATA services following section 271 authorization.

⁶⁶⁶ See Michigan PSC July 26 Reply Comments at 2 (seeking clarification regarding state authority over matters discussed in the conditions).

conditions duplicates a requirement imposed by a state pursuant to its review of the proposed merger, parties can elect to receive the benefit under either these conditions or the identical state conditions.

359. We approve this merger on the assumption and expectation that all of the conditions that we adopt today will remain effective and enforceable for 36 months, or the period specified in the condition if different. Accordingly, for conditions that take effect a certain period of time after the merger closing, SBC/Ameritech's obligations under those conditions would extend from their effective date for a full 36-month period of benefit, which would fall later than 36 months after the merger closing.

360. We expect that SBC/Ameritech will implement each of these conditions in full, in good faith and in a reasonable manner to ensure that all telecommunications carriers and the public are able to obtain the full benefits of these conditions. If SBC/Ameritech does not fulfill its obligation to perform each of the conditions, pursuant to our public interest mandate under the Communications Act we must ensure that the merger remains beneficial to the public. We intend to utilize every available enforcement mechanism, including, if necessary, revocation of the merged firm's section 214 authority,⁶⁶⁷ to ensure compliance with these conditions. To this end, should the merged entity systematically fail to meet its obligations, we can and will revoke relevant licenses, or require the divestiture of SBC/Ameritech into the current SBC and Ameritech companies.⁶⁶⁸ Although such action would clearly be a last resort, it is one that would have to be taken if there is no other means for ensuring that the merger, on balance, benefits the public.

361. Our approval of this Application subject to conditions should not be considered as an indication that future applicants always will be able to rely on similar public interest commitments to offset potential public interest harms.⁶⁶⁹ Each case will present different facts and circumstances. Some potential mergers may present serious public interest harms such that no package of commitments, each of which may benefit some aspect of the public interest, could offset the harms. In any case, however, the burden rests always with the applicants to demonstrate that any proposed transaction will, on balance, further the public interest, convenience and necessity.

362. We also reiterate our growing concern about the impact of the declining number of major incumbent LECs. As the Commission has stated, further consolidation among the

⁶⁶⁷ See *CCN, Inc., et al.*, CC Docket No. 97-144, Order, 13 FCC Rcd 13599 (1998) (revoking the Fletcher Companies' section 214 operating authority for slamming and other violations of the Communications Act and Commission rules).

⁶⁶⁸ Cf. *Application of General Telephone and Electronics Corporation to Acquire Control of Telenet Corporation and its Wholly-Owned Subsidiary Telenet Communications Corporation*, File Nos. W-P-C-2486, *et al.*, Memorandum Opinion and Order, 72 FCC 2d 111, 169, para. 170 (1979) (granting section 214 application of GTE to acquire Telenet subject to conditions that included structural separation but stating that the Commission would "take any necessary steps including divestiture" should GTE violate the order's requirements).

⁶⁶⁹ See *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19993, para. 15.

major incumbent LECs could gravely impair our implementation of Congress's directive to open all telecommunications markets to competition. After the Bell Atlantic/NYNEX merger reduced the number of remaining RBOCs to five, this Commission expressly cautioned that future applicants seeking approval of a merger between major incumbent LECs "bear an additional burden in establishing that a proposed merger will, on balance, be pro-competitive and therefore serve the public interest, convenience and necessity."⁶⁷⁰ The instant transaction, approved with a stringent set of conditions, removes yet another independent major incumbent LEC, thereby further escalating the burden on any future major incumbent LEC merger applicants.

1. Promoting Equitable and Efficient Advanced Services Deployment

363. *Separate Affiliate for Advanced Services.* Under this condition, SBC and Ameritech will create, prior to closing the merger, one or more separate affiliates to provide all advanced services⁶⁷¹ in the combined SBC/Ameritech⁶⁷² region on a phased-in basis. At present, we note that SBC and Ameritech are only permitted to provide intraLATA advanced services.⁶⁷³ Establishing an advanced services separate affiliate will provide a structural mechanism to ensure that competing providers of advanced services receive effective, nondiscriminatory access to the facilities and services of the merged firm's incumbent LECs that are necessary to provide advanced services. Because the merged firm's own separate advanced services affiliate will use the same processes as competitors, and pay an equivalent price for facilities and services, the condition should ensure a level playing field between SBC/Ameritech and its advanced services competitors.⁶⁷⁴ Given this expectation, we anticipate that this condition will greatly accelerate

⁶⁷⁰ *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19994, para. 16.

⁶⁷¹ For purposes of these conditions, the term "advanced services" means any interstate or intrastate wireline telecommunications services (such as ADSL, IDSL, xDSL, frame relay, and cell relay) that rely on packetized technology and have the capability of supporting transmission speeds of at least 56 kilobits per second (kbps) in both directions. Ordinary dial-up Internet access service, which is not packetized and does not consist of speeds exceeding 56 kbps in both directions, is not included within this definition. *See* SBC/Ameritech July 26 Reply Comments at 75-76 (responding to AT&T's claim that the definition could include ordinary dial-up Internet access).

⁶⁷² We use the term "SBC/Ameritech" to represent the entity that will result from the merger, consisting of today's SBC Communications Inc., Ameritech Corporation, and each company's incumbent LEC telephone subsidiaries.

⁶⁷³ SBC/Ameritech must receive authorization under section 271 to provide in-region, interLATA services. At that time, SBC/Ameritech must provide in-region, interLATA advanced services through a separate affiliate that complies fully with the requirements of section 272.

⁶⁷⁴ Agreeing that this condition will promote competition in the advanced services market, NorthPoint, a facilities-based data competitor, observes that, by requiring the SBC/Ameritech incumbent LECs to provide nondiscriminatory treatment to all telecommunications carriers, the separate advanced services affiliates will "wait in line for collocation, petition to open 'closed' offices, and otherwise deal with the same collocation and [OSS] implementation problems experienced by competitive LECs." NorthPoint July 19 Comments at 4-5. NorthPoint also notes that the condition's "simple but critical rule that the incumbent LEC's advanced services subsidiary deal at arm's length with the incumbent for the purchase of collocation and loops," would require, for the first time, that an affiliate of the incumbent LEC "pay the same prices as competitive LECs for loops and collocation, eliminating the DSL price squeeze." *Id.* at 4-5. *See also* MCI WorldCom July 19 Comments at 40 (supporting separate advanced services affiliate condition because "separation can help enforcement of the unbundling, resale, and nondiscrimination requirements of section 251(c)."); Texas PUC Aug. 5 Comments at 5 (supporting separate advanced services affiliate).

competition in the advanced services market by lowering the costs and risks of entry and reducing uncertainty, while prodding all carriers, including the Applicants, to hasten deployment.⁶⁷⁵

364. The separate advanced services affiliate will be distinct from SBC/Ameritech's in-region telephone companies and operate largely in accordance with the structural, transactional, and nondiscrimination requirements of sections 272(b), (c), (e), and (g).⁶⁷⁶ The condition, however, specifies certain activities that will be permitted between the SBC/Ameritech incumbent LEC and the separate affiliate, some of which differ from section 272's requirements.

365. Specifically, the SBC/Ameritech incumbent LEC and its advanced services affiliate may jointly market the other's services and perform certain customer care services.⁶⁷⁷ In addition, the incumbent may perform certain operation, installation, and maintenance (OI&M) functions,⁶⁷⁸ pursuant to a tariff, written affiliate agreement,⁶⁷⁹ or approved interconnection agreement, and provide billing and collection services,⁶⁸⁰ pursuant to a written agreement, for its

⁶⁷⁵ See SBC/Ameritech July 26 Reply Comments at 74.

⁶⁷⁶ 47 U.S.C. § 272(b), (c), (e), and (g). After the Applicants' July filing, several parties sought clarification as to the services that the separate advanced services affiliate or SBC/Ameritech's incumbent LEC could provide the other, as well as the methods used to provide them and the personnel and equipment that an SBC/Ameritech incumbent LEC can transfer to the separate affiliate. See, e.g., Cable & Wireless July 19 Comments at 8. The Applicants' subsequent filings provided this detail. See SBC/Ameritech Aug. 27 *Ex Parte* at 4, Att. 1 at 2-12; SBC/Ameritech Sept. 7 *Ex Parte* at 1, Att. 1 at 2-12, Att. 2 at 1-20; SBC/Ameritech Sept. 17 *Ex Parte* at 1-4.

⁶⁷⁷ The customer care services permitted under the condition on an exclusive basis are: (1) ongoing customer notification of service order progress; (2) response to a customer's inquiry regarding the status of an order; (3) changes to customer account information; and (4) receipt of customer complaints (other than receipt and isolation of trouble reports).

⁶⁷⁸ The OI&M functions subject to these conditions encompass the deployment and operation of a facilities-based telecommunications network. Many competitive carriers contract with third parties for some or all of these functions, and the conditions permit the SBC/Ameritech separate affiliate to contract with the SBC/Ameritech incumbent LEC for such functions, provided that the incumbent acts in a nondiscriminatory fashion. The OI&M activities performed by an incumbent LEC in the normal course of providing unbundled elements, services or interconnection are not subject to these conditions. Such normal OI&M activities will not be affected by the conditions and will be provided and priced in accordance with forward-looking rules applicable to the underlying service, unbundled element or interconnection.

⁶⁷⁹ We note that, in accordance with the Commission's accounting safeguards, any transactions or shared services performed pursuant to this written affiliate agreement must be valued in accordance with the affiliate transactions rules, reduced to writing and posted on the Internet, and made available to competitors on the same rates, terms and conditions. See *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21992, para. 181.

⁶⁸⁰ The billing and collection services that the incumbent is permitted to provide on a nondiscriminatory basis include payment arrangements, account adjustment, responding to account balance inquiries, account closure, responses to legal action affecting or involving the customer, and receipt and resolution of customer billing and collection complaints. SBC/Ameritech may, for example, include the affiliate's and other carriers' bills on a separate page in the same envelope with its bill, or it may choose to place the affiliate's and other carriers' bills in a separate envelope. Either way, SBC/Ameritech must offer the same services that it provides to its affiliate to unaffiliated carriers at the same rates, terms and conditions, and on a disaggregated basis that permits the unaffiliated providers to select the particular services that they desire from the incumbent.

separate affiliate on a nondiscriminatory basis. The incumbent may engage in line sharing⁶⁸¹ with its affiliate on an exclusive, interim basis as long as it provides unaffiliated entities with the “surrogate line-sharing” discount described below for the use of a second loop to provide advanced services. The incumbent LEC may also transfer to the separate affiliate specified advanced services equipment⁶⁸² on an exclusive basis during a limited grace period. Starting 30 days after the merger closing, all new advanced services equipment must be purchased and owned by the separate affiliate. The affiliate may also use the SBC/Ameritech incumbent LEC’s name, trademarks or service marks on an exclusive basis, and employees of the separate affiliate may be located in the same buildings and on the same floors as the incumbent LEC’s employees. Moreover, although SBC/Ameritech will comply with the Commission’s section 272 accounting safeguards,⁶⁸³ it will be permitted to deviate from these only to the extent that it will not have to comply with the Commission’s transaction disclosure requirements under section 272(b)(5) with respect to transactions conducted pursuant to interconnection agreements between an SBC/Ameritech incumbent and its advanced services affiliate. To ensure that all transactions between the advanced services affiliate and the incumbent are conducted on an arms-length basis, SBC/Ameritech’s compliance with this separate affiliate condition will be subject to a rigorous annual audit.⁶⁸⁴

366. After a transition period, the responsibility to provide advanced services in the SBC/Ameritech service area will rest with the separate affiliate, and the activities that it and the incumbent may undertake are specifically set forth in the conditions. Nevertheless, the conditions permit an SBC/Ameritech incumbent to perform certain activities on behalf of its affiliate on an exclusive basis for the period of time during which SBC/Ameritech transitions to this separate affiliate structure. Specifically, for a limited period, SBC/Ameritech may provide network planning, engineering, design or assignment services associated with advanced services to its affiliate, and receive and isolate troubles affecting an advanced services customer on behalf of the affiliate.

367. SBC/Ameritech’s obligation to provide all advanced services through a separate affiliate will sunset after either: (a) the later of 42 months after the merger’s closing, or 36 months after the incumbent ceases to process trouble reports for the affiliate on an exclusive

⁶⁸¹ “Line sharing” allows two different service providers to offer services over the same line, with each provider utilizing different frequencies to transport voice or data over that line. See *Advanced Services Further Notice*, 14 FCC Rcd at 4805-06, para. 92.

⁶⁸² For purposes of this condition, the equipment that may be transferred consists of: (1) DSLAMs or functionally equivalent equipment, (2) spectrum splitters that are solely used in the provision of advanced services, (3) packet switches and multiplexers such as ATMs and frame relay engines used to provide advanced services, (4) modems used in the provision of packetized data, and (5) DACS frames used only in the provision of advanced services. Spectrum splitters used to separate the voice-grade channel from the advanced services channel are not permitted to be transferred. Such asset transfers must take place in accordance with the Commission’s accounting safeguards. Consistent with the Commission’s rules, if SBC/Ameritech transfers to its separate advanced services affiliate a facility that is deemed to be an unbundled network element under 47 U.S.C. § 251(c)(3), the Commission’s unbundling requirements will attach with respect to that element. See 47 C.F.R. § 53.207.

⁶⁸³ See *Accounting Safeguards Order*, 11 FCC Rcd at 17588-618, 17652-55, paras. 111-70, 251-58.

⁶⁸⁴ See ALTS July 19 Comments at 19-20 (suggesting audit of all sub-parent transactions and relationship).

basis; (b) the date on which Congress has enacted legislation that specifically prohibits the Commission from requiring an incumbent LEC to establish a separate advanced services affiliate and the Commission has modified its rules and regulations in a manner that would materially alter the structure or interaction between the incumbent and affiliate from that set forth in the conditions;⁶⁸⁵ or (c) nine months after a final, non-appealable judicial decision determines that the separate advanced services affiliate is deemed a successor or assign of the incumbent, unless that decision is based substantially on conduct by or between an SBC/Ameritech incumbent and its affiliate that was not expressly permitted by these conditions.

368. If, after one of these three sunset events occurs, SBC/Ameritech decides to no longer provide advanced services through a separate affiliate in a particular state, then SBC/Ameritech will continue certain other obligations until 48 months after the merger closing date. In that case, SBC/Ameritech must, for example, provide all advanced services through a separate office or division that will continue using the same OSS interfaces, processes and procedures that are made available to unaffiliated entities (including using the Electronic Data Interchange (EDI) interface for processing a substantial majority of pre-order inquiries and orders). In addition, SBC/Ameritech will continue the surrogate line-sharing and advanced services OSS discounts, and its incumbent LECs will continue to provide unaffiliated carriers with the same OI&M services that its retail operations use, as well as those OI&M services that previously were made available under the conditions.

369. *Surrogate Line-Sharing Discount.* By separating a line into a voice channel and an advanced services channel and carrying both voice and advanced services traffic simultaneously, line sharing potentially enables each service to be provided by a different carrier.⁶⁸⁶ Although the Applicants have not proposed in this proceeding to allow other carriers to provide data services over the same loop on which SBC or Ameritech provides voice service, they have proposed to allow their separate advanced services affiliate to do so. The conditions permit SBC/Ameritech to provide line sharing to its advanced services affiliate on an exclusive basis until SBC/Ameritech provides line sharing to unaffiliated carriers in the same geographic area. Nevertheless, in order to ensure that competitors receive a benefit comparable to this "interim line sharing" between an SBC/Ameritech incumbent LEC and its affiliate, SBC/Ameritech will offer other carriers a second loop at a substantial discount. In this manner, the conditions require SBC/Ameritech to offer competing carriers the economic equivalent of line sharing until line sharing becomes available to unaffiliated carriers.⁶⁸⁷ In addition, the

⁶⁸⁵ Examples of such a material change would be if the Commission prohibits an incumbent LEC from providing joint marketing or operation, installation and maintenance services to an advanced services affiliate. See MCI WorldCom July 19 Comments at 46; Sprint July 19 Comments at 30 (requesting clarification as to the type of modifications that would produce a material change).

⁶⁸⁶ *Advanced Services Further Notice*, 14 FCC Rcd at 4806, para. 93.

⁶⁸⁷ The Applicants' July filing contained a proposed condition requiring SBC/Ameritech to implement line sharing on a permanent basis, subject to a 12-month implementation schedule, when it was technically and commercially feasible to do so according to industry standards. See SBC/Ameritech July 1 *Ex Parte*, Att. A at para. 33. Several commenters protested that the restrictions on when this obligation would take effect eviscerated any potential benefit from the condition. See CompTel July 19 Comments at 30-32; Level 3 July 19 Comments at 12,

performance measurements adopted as part of this Order will encourage the rapid installation of the surrogate line. For example, measures 6c and 8 ensure that loops will be installed in a nondiscriminatory and timely manner.

370. Specifically, where SBC/Ameritech and its separate advanced services affiliate engage in "interim line sharing," the merged firm will charge unaffiliated providers of advanced services surrogate charges for an additional unbundled loop, provided that the loop is used solely for the provision of advanced services (conforming to an industry-standard spectral mask)⁶⁸⁸ to a customer that is receiving voice-grade service,⁶⁸⁹ either on a retail or wholesale basis, from an SBC/Ameritech incumbent LEC.⁶⁹⁰ The "surrogate line-sharing charges," which SBC/Ameritech also will charge to its separate advanced services affiliate for interim line sharing, represent a 50-percent discount from the monthly recurring charge and the nonrecurring line or service connection charge. This discount not only puts unaffiliated advanced services providers on comparable economic footing with the merged firm's separate advanced services affiliate, but, pending actual implementation of line sharing, it allows these carriers to obtain reduced loop costs that otherwise would not be available to them. We note that, in the event that SBC/Ameritech is required to line share with competitors, the Applicants will temporarily waive all nonrecurring charges associated with the installation of a new shared line in order to ease the transition for those competitors using a second loop under the surrogate line sharing discount. In

NorthPoint July 19 Comments at 14-16; Rhythms July 19 Comments at 10-11. The Applicants subsequently removed the proposed condition in their August filing. See ALTS July 19 Comments at 22 (observing that, until line sharing is ordered ubiquitously, the surrogate charge appears to be an adequate substitute). See also *Advanced Services Further Notice*, 14 FCC Rcd at 4805-12, paras. 92-107 (seeking further comment on operational, pricing and other practical issues associated with line sharing).

⁶⁸⁸ The Applicants' July filing was criticized for referencing a spectral mask contained in an SBC technical publication (i.e., SBC TP 76730). See, e.g., MCI WorldCom July 19 Comments at 37-38; Sprint July 19 Comments at 28. We believe that the Applicants' later use of an industry standard, which may evolve as technologies change, is a better way of delineating the scope of services that carriers receiving the surrogate line-sharing charges may provide over an additional loop.

⁶⁸⁹ Pursuant to NorthPoint's suggestion, the Applicants defined the term "voice grade service" in their August filing. See NorthPoint July 19 Comments at 18; SBC/Ameritech Aug. 27 *Ex Parte* at 4.

⁶⁹⁰ We are not troubled that the discount applies only to loops that are used solely for providing advanced services. See Level 3 July 19 Comments at 12; Sprint July 19 Comments at 26-27 (objecting to advanced services-only restriction). This condition is designed to promote rapid deployment of advanced services by removing any cost advantages that the separate advanced services affiliate, which receives interim line-sharing capability from an SBC/Ameritech incumbent LEC, would have over other advanced services providers that, because line sharing is not available to them in SBC/Ameritech territories, would have to provide such services over a stand-alone line. As ALTS points out, line sharing "makes the most sense . . . when the CLEC wants to provide high-speed data services but is not in the business of providing POTS." ALTS July 19 Comments at 21-22. We also note that the Applicants' proposed mechanisms to enforce this restriction, which include a carrier certification process that SBC/Ameritech may audit, were altered in the August filing in response to concern from commenters. See MCI WorldCom July 19 Comments at 38; Sprint July 19 Comments at 28-29. Under the conditions we adopt today, the appropriate state commission has discretion to deny a carrier the surrogate line-sharing charges on any loop for which it found the use restriction or audit provision violated, and to remove a carrier's entitlement to any future surrogate line-sharing charges only upon a finding of an intentional and repeated violation. This altered approach provides state commissions with more flexibility and results in a less extreme penalty for a carrier's unintentional violation than the automatic disqualification from future discounts called for under the Applicants' July filing.

addition, SBC/Ameritech will continue to provide this discount until the line is actually shared.⁶⁹¹ We find that this condition will spur deployment of advanced services by SBC/Ameritech, as well as other carriers, while ensuring that these other carriers receive treatment from an SBC/Ameritech incumbent LEC comparable to that provided to the SBC/Ameritech separate affiliate.

371. *Advanced Services OSS.* In addition to the general OSS conditions outlined below, SBC/Ameritech will develop and deploy common electronic OSS interfaces across all 13 SBC/Ameritech states to be used by any telecommunications carrier, including the merged firm's advanced services affiliates, for pre-ordering and ordering facilities used to provide advanced services. This condition will guard against discrimination by the merged entity toward its rivals while, at the same time, lower those rivals' costs of providing competing advanced services. The requirements of this condition track the phases involved in unifying SBC's and Ameritech's general OSS interfaces described below. Subject to certain implementation schedules, the merged firm will: (1) prepare a plan of record outlining the steps that will be taken in developing and deploying the electronic OSS advanced services interfaces (Phase I); (2) collaborate with participating telecommunications carriers to reach agreement on the interfaces, enhancements, and business requirements to be implemented (Phase II); and (3) develop and deploy the agreed-upon interfaces, enhancements, and business requirements within a specified period of time (Phase III). Phases I and III are associated with voluntary incentive payments to encourage rapid deployment. SBC and Ameritech therefore will either meet the planning (Phase I) and deployment (Phase III) commitments within the prescribed time period, or make voluntary incentive payments of \$10,000 per business day per state, or up to \$110,000 per day across all 13 states, for a missed target date. The total voluntary payments will not exceed \$20 million across all states. Once deployed, the Applicants will maintain the enhancements and additional interfaces for not less than 36 months. The Chief of the Common Carrier Bureau may authorize an independent third party arbitrator to resolve disputes stemming from the collaborative process or SBC/Ameritech's implementation of the agreed-upon interfaces, enhancements and business requirements.

372. Until SBC/Ameritech has developed and deployed the advanced services OSS enhancements, interfaces, and business requirements described above, and the SBC/Ameritech separate advanced services affiliate uses the EDI interface for pre-ordering and ordering a substantial majority⁶⁹² of the facilities it uses to provide advanced services, SBC/Ameritech will offer telecommunications carriers a 25-percent discount from the recurring and nonrecurring charges for unbundled loops used in the provision of advanced services. This discount is intended to compensate other carriers for the unenhanced OSS and to provide SBC/Ameritech with an incentive to improve the systems and processes as quickly as possible.

⁶⁹¹ See SBC/Ameritech Aug. 27 *Ex Parte* at 5.

⁶⁹² After commenters sought clarification of the term "substantial majority," the Applicants defined it as at least 75 percent of pre-order inquiries and 75 percent of orders. See Covad July 22 Comments at 57.

373. *Access to Advanced Services Loop Information.* This condition should promote rapid deployment of advanced services by ensuring that carriers have access to the information they need to market and sell their advanced services offerings. Competing carriers have stated that they need, at the pre-ordering stage, a method of obtaining information about the local loop to make informed decisions about whether and how they can provide advanced services to a customer.⁶⁹³ Thus, the condition reiterates SBC/Ameritech's general obligation under the Communications Act to provide unaffiliated telecommunications carriers with nondiscriminatory access to the same loop information that is available to its own retail operations. The condition goes on, however, to require SBC/Ameritech to provide specific information regarding its loops to requesting telecommunications carriers without regard to the information that is available to SBC/Ameritech's retail operations.⁶⁹⁴

374. First, SBC/Ameritech will provide competitors electronic, pre-order access to address-specific loop pre-qualification information (*i.e.*, the theoretical loop length) before the merger's closing in most SBC states, and within 22 months of the closing in the Ameritech states.⁶⁹⁵ Second, within one year of the merger's closing, SBC/Ameritech will provide in all SBC/Ameritech states pre-order Internet access to loop pre-qualification information based upon a zip code of end users within a wire center. This will assist telecommunications carriers in targeting geographic areas capable of receiving advanced services. Third, no later than 90 days after the merger closing, SBC/Ameritech will provide requesting telecommunications carriers, including its separate advanced services affiliate, with additional loop make-up information in response to an address-specific request. Depending on the request, SBC/Ameritech will provide, by manual means until it is available electronically, information contained on an individual loop record, which may include: the actual loop length; length by gauge; the presence of bridged taps, load coils, and repeaters, and their approximate location and number; the presence of pair-gain devices, digital loop carriers or digital added main lines; and the presence of disturbers in the same or adjacent binder groups.⁶⁹⁶ SBC/Ameritech will price the provision of this loop makeup information in compliance with any applicable Commission pricing rules for UNEs. Although SBC/Ameritech is allowed under the condition to provide such loop information by manual

⁶⁹³ See, e.g., Covad July 22 Comments at 53; Focal/Adelphia/McLeod July 19 Comments at 8-13; Level 3 July 19 Comments at 8-10; MCI WorldCom July 19 Comments at 37-38; NorthPoint July 19 Comments at 23; Rhythms Net July 19 Comments at 22-25.

⁶⁹⁴ We note that, in response to concern that the nondiscriminatory obligation to provide loop information was ambiguous in the Applicants' July proposal, the Applicants subsequently revised their commitment to make the nondiscrimination requirement explicit and to clarify distinct ways in which competing carriers can obtain, on a timely basis, information relevant for assessing the feasibility of providing advanced services at a given location. See ALTS July 19 Comments at 15-16. See also SBC/Ameritech Aug. 27 *Ex Parte* at 3, 4.

⁶⁹⁵ This difference in timing is because SBC already has the necessary information in electronic form, while Ameritech does not. In light of SBC/Ameritech's incentive to speed electronic access to its separate advanced services affiliate, we decline to require in this proceeding that Ameritech provide electronic access to the theoretical loop length by the merger closing date. See CoreComm July 22 Comments at 12.

⁶⁹⁶ See Letter from Joan Marsh, AT&T, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141, at 17 (filed Aug. 9, 1999) (AT&T Aug. 9 *Ex Parte*) (proposing categories of loop makeup information); SBC/Ameritech Aug. 27 *Ex Parte* at 4.

means pending electronic delivery, the condition (like all others) does not prevent a state from imposing additional consistent requirements.⁶⁹⁷

375. *Loop Conditioning Charges and Cost Studies.* Numerous parties allege that the rates charged by incumbents for conditioning loops are unreasonably high and preclude competitors from offering advanced services to many potential customers, particularly residential and small business customers where the conditioning costs may exceed prospective net income.⁶⁹⁸ This condition is designed to ensure that SBC/Ameritech will not erect a barrier to the competitive deployment of advanced services by charging excessive rates for loop conditioning. Within 180 days of the merger's closing, SBC/Ameritech will file with state commissions cost studies and proposed rates for conditioning loops used in the provision of advanced services, prepared in accordance with the methodology contained in the Commission's pricing rules for UNEs.⁶⁹⁹ Pending approval of state-specific rates, SBC/Ameritech will immediately make available to carriers loop conditioning rates (provided that they are greater than zero) contained in any effective interconnection agreement to which an SBC/Ameritech incumbent LEC is a party, subject to true-up.⁷⁰⁰ In addition, subject to true-up, SBC/Ameritech will impose no loop conditioning charges on loops less than 12,000 theoretical feet during this period. Moreover, advanced services providers will have a choice in the amount and extent of conditioning on any particular loop.

376. *Nondiscriminatory Rollout of xDSL Services.* As a means of ensuring that the merged firm's rollout of advanced services reaches some of the least competitive market segments and is more widely available to low-income consumers, SBC and Ameritech will target their deployment of xDSL services to include low-income groups in rural and urban areas.⁷⁰¹ Specifically, for each SBC/Ameritech in-region state, SBC/Ameritech will ensure that at least 10 percent of the rural wire centers where it, or its separate advanced services affiliate, deploys xDSL service will be low-income rural wire centers, meaning those wire centers with the

⁶⁹⁷ See Texas PUC Aug. 5 Comments at 3 (commenting that the "Texas PUC and other states may wish to more strongly encourage SWBT or Ameritech to provide loop make-up data via electronic means.").

⁶⁹⁸ See, e.g., NorthPoint Comments at 4-5; Rhythms Net July 19 Comments at 7-9.

⁶⁹⁹ See 47 C.F.R. § 51.501 *et seq.* (requiring the total element long-run incremental cost standard for the pricing of network elements).

⁷⁰⁰ Several commenters objected to the set of uniform interim rates set forth in the Applicants' July proposal that would have applied in each SBC/Ameritech state pending the establishment of state-specific rates for loop conditioning. See, e.g., ALTS July 19 Comments at 14-15 (claiming proposed rates were significantly higher than those currently offered in some SBC states); AT&T July 19 Comments, App. A at 53; Covad July 22 Comments at 45-51 (claiming the Applicants' proposed charges were discriminatory, not cost-based, and higher than the current charges in several SBC and Ameritech states); GST/KMC/LOGIX/RCN July 19 Comments at 6-7; MCI WorldCom July 19 Comments at 38-40; Sprint July 19 Comments at 12-14 (proposing alternate conditioning rates); Texas PUC Aug. 5 Comments at 3 (indicating that the proposed rates "represent a significant departure from the approach taken by the Texas PUC in interim agreements."). The Applicants subsequently dropped these rates from the proposed conditions package, and agreed to allow carriers to elect, on an interim basis and subject to true-up, conditioning rates contained in any interconnection agreement in any SBC/Ameritech state. See SBC/Ameritech August 27 *Ex Parte* at Att. 1 at 27.

⁷⁰¹ See Campaign for Telecommunications Access July 19 Comments at 15 (predicting that this condition would advance the roll out of xDSL and other advanced services to rural and inner city areas).

greatest number of low-income households. Similarly, at least 10 percent of the urban wire centers where the merged firm or its separate advanced services affiliate deploys xDSL service in each in-region state will be low-income urban wire centers. These requirements will become enforceable for any given state 180 days after the merger closes and after SBC/Ameritech and/or its advanced services affiliate has deployed xDSL service in that state in at least 20 urban wire centers (to activate the urban requirement) or 20 rural wire centers (to activate the rural requirement). After the respective effective date, SBC/Ameritech will provide nondiscriminatory deployment of xDSL services for at least 36 months thereafter. SBC/Ameritech will consult with the appropriate state commission, within 90 days of the merger's closing, to classify all SBC/Ameritech wire centers in that state as urban or rural.⁷⁰² Furthermore, to assist in monitoring the merged firm's equitable deployment of xDSL, SBC/Ameritech will publicly file a quarterly report with the Commission describing the status of its xDSL deployment, including the identity and location of each urban and rural wire center where it has deployed xDSL.⁷⁰³

2. Ensuring Open Local Markets

377. *Carrier-to-Carrier Performance Plan.* As a means of ensuring that SBC/Ameritech's service to telecommunications carriers will not deteriorate as a result of the merger and the larger firm's increased incentive and ability to discriminate and to stimulate the merged entity to adopt "best practices" that clearly favor public rather than private interests, SBC/Ameritech will publicly file performance measurement data for each of the 13 SBC/Ameritech in-region states with this Commission and the relevant state commission on a monthly basis. The data will reflect SBC/Ameritech incumbent LECs' performance of their obligations toward telecommunications carriers in 20 different measurement categories. These categories cover key aspects of pre-ordering, ordering, provisioning, maintenance and repair associated with UNEs, interconnection, and resold services. Many of the twenty measurement categories are divided into numerous disaggregated sub-measurements, thereby tracking SBC/Ameritech's performance for different functions and different types of service.⁷⁰⁴ Furthermore, the list of measurements reported by SBC/Ameritech under this condition is not static. This list is subject to addition or deletion, and the measurements themselves are subject to modification, by the Chief of the Common Carrier Bureau, through a joint semi-annual review with SBC/Ameritech.⁷⁰⁵

378. Under this condition, SBC/Ameritech will either achieve the stated performance goal for the agreed-upon measures in each state or, if SBC/Ameritech fails to provide service that meets the stated performance goal, make a voluntary incentive payment to the U.S. Treasury in

⁷⁰² See Edgemont July 19 Comments at 12 (criticizing that the Applicants had "sole control" over classifying wire centers in the initial July proposal).

⁷⁰³ See SBC/Ameritech Sept. 29 *Ex Parte* at 1.

⁷⁰⁴ Following the Texas PUC's observation that certain statistical calculations in the July Proposal differed from the Texas plan, the Applicants altered the statistical methodology to correspond more closely with the Texas plan. See Texas PUC Aug. 5 Comments at 4-5.

⁷⁰⁵ Other elements of the plan are also subject to periodic review and modification by the Chief of the Common Carrier Bureau, including certain aspects of the payment calculation mechanism.

an amount varying according to the level and significance of discrimination detected. These voluntary incentive payments are subject to monthly state-specific caps that total, across all states, as much as \$250 million in the first year, \$375 million in the second year, and \$500 million in the third year (*i.e.*, a total of up to \$1.125 billion over three years), with a credit for amounts paid to states and competitive LECs under state-imposed performance monitoring plans or under liquidated damages provisions of interconnection agreements.⁷⁰⁶ As discussed below, SBC/Ameritech's potential liability may be reduced by up to \$125 million in the third year if SBC/Ameritech completes and deploys OSS enhancements before their target date, depending upon the enhancement and how early it is completed.

379. The specific performance measures that SBC and Ameritech will implement are based primarily upon performance measures developed in a Texas collaborative process involving SBC's application for in-region, interLATA relief. The performance measures in California and Nevada will be reported using rules that were developed in a collaborative process in California. Rather than develop a new set of measures for this merger proceeding, we find that relying upon these performance measures and corresponding business rules, which may be modified over time, will achieve the goals of the Carrier-to-Carrier Performance Plan and conserve time and resources. We emphasize that use of such measures in this merger review proceeding is not meant to affect, supplant, or supersede any existing or future state performance plan. The adoption of these measures in the present merger context does not signify that these performance measures would be sufficient in the context of a section 271 application.

380. These limited performance measures are intended to offset or prevent some of the merger's potential harmful effects; they are not designed or intended as anti-backsliding measures for purposes of section 271. The present performance plan must be viewed in the context of the entire set of proposed safeguards that comprise the overall merger conditions package. As SBC and Ameritech explain, this merger-related Carrier-to-Carrier Performance Plan is designed to cover the "range of activities that have the most direct and immediate impact

⁷⁰⁶ In addition to criticizing the complexity of the voluntary payment structure set forth in the Applicants' July proposal, several commenters objected that the payment caps were inadequate to discourage the merged firm from providing substandard service to competitors. *See, e.g.*, AT&T July 19 Comments, App. A at 41; ALTS July 19 Comments at 4; MCI WorldCom July 19 Comments at 20-24, 32; Sprint July 19 Comments at 59-60. Since their initial proposal, the Applicants increased the merged firm's total payment exposure to \$1.125 billion from the initially-proposed level of \$1 billion. In addition, the Applicants substantially simplified the voluntary payment structure by eliminating two of the three "tiers" of payments, and multiplying the per-occurrence or per-measure voluntary payment figure for the remaining tier by a factor of three. Finally, the Applicants provided that they will increase the payments for performance measurements where observations are particularly low, as well as for specific sub-measurements representing low-volume, nascent services. For these measurements and sub-measurements, the per-occurrence and per-measurement payments will again be tripled. *See SBC/Ameritech Aug. 27 Ex Parte* at 5-6. We find that this "low-volume" multiplier will help to ensure that the Applicants' proposed incentive mechanism will offer meaningful protections where service volumes are low. Particularly in light of these modifications, we find that the voluntary payment structure and cap are sufficient to address the limited purposes of the Carrier-to-Carrier Performance Plan – to neutralize the merged firm's increased incentive and ability to discriminate and to remedy other merger-specific potential harms such as the loss of a major incumbent LEC benchmark. *See infra*, Section V (Analysis of Potential Public Interest Harms).

on [competitive LECs] and their customers,” and is not intended “to cover each and every facet of local competition, to supplant state performance programs, nor to preempt state consideration of performance measures for section 271 purposes.”⁷⁰⁷ Indeed, we expect – and we encourage – each state to adopt rigorous and extensive performance monitoring programs in connection with section 271 proceedings. Under these conditions, therefore, SBC/Ameritech’s obligations under the plan in a given state will terminate upon the company’s authorization to provide in-region, interLATA service in that state. The condition will expire otherwise 36 months after the payment obligation arises in the state.

381. *Uniform Enhanced OSS.* Effective, nondiscriminatory access to OSS is critical for achieving the 1996 Act’s local competition objectives. This condition will guard against discriminatory treatment by the merged entity to its rivals, as well as reducing the costs and uncertainty of providing competing services. Under this condition, SBC and Ameritech will establish, in consultation with competitive LECs, uniform OSS interfaces and systems across their combined 13 in-region states that are based on the best practices (from their competitors’ perspective) of the two companies.

382. Specifically, the companies will develop and deploy uniform application-to-application interfaces⁷⁰⁸ (e.g., EDI), uniform graphical user interfaces, uniform business rules or software solutions to ensure that local service requests submitted by other carriers are consistent with SBC/Ameritech’s business rules, and a uniform change management process, which will be deployed in each SBC/Ameritech state unless rejected by that state. In general, for each obligation, the merged firm will: (1) prepare a plan of record outlining the steps that will be taken in unifying the OSS of each operating company (Phase I); (2) collaborate with participating competitive LECs to reach agreement on the interfaces, enhancements, business requirements, and change management process to be implemented (Phase II); and (3) develop and deploy the agreed-upon interfaces, enhancements, and business requirements within a specified period of time (Phase III). Phases I and III are associated with voluntary incentive payments to encourage rapid deployment. SBC and Ameritech will either meet the planning (Phase I) and deployment (Phase III) requirements within the prescribed time period, or make voluntary incentive payments to the U.S. Treasury of \$10,000 per business day per state, or up to \$110,000 per day across all 13 states, for a missed target date. The total voluntary payments will not exceed \$20 million per obligation across all states. Once deployed, the Applicants will maintain the enhancements and additional interfaces for not less than 36 months.⁷⁰⁹ The Applicants also will provide direct access to SBC’s Service Order Retrieval and Distribution system and Ameritech’s and SNET’s equivalent service order processing systems, as well as enhancements to SBC’s existing electronic bonding interface for maintenance and repair. Under

⁷⁰⁷ SBC/Ameritech July 26 Reply Comments at 40.

⁷⁰⁸ In response to comments regarding the need to define the term “uniform interfaces,” the Applicants incorporated a definition that encompasses suggestions by commenters. See, e.g., MCI WorldCom July 19 Comments at 31.

⁷⁰⁹ See Covad July 22 Comments at 31 (noting that, under the Applicants’ July proposal, SBC/Ameritech could spend two years designing an interface and then stop providing it one year later). See also SBC/Ameritech Aug. 27 *Ex Parte* at 6.

this condition, states may choose whether to accept SBC/Ameritech's plan for uniform change management.⁷¹⁰

383. We share SBC/Ameritech's concern that disputes between SBC/Ameritech and its rivals might substantially delay the availability of these important OSS enhancements. Therefore, we agree that the Chief of the Common Carrier Bureau should be empowered to authorize an independent third party arbitrator to resolve disputes stemming from the collaborative process or SBC/Ameritech's proper implementation of the agreed-upon interfaces, enhancements and business requirements.⁷¹¹ In addition, we note that SBC/Ameritech has incentive to complete the OSS enhancements as quickly as possible. Specifically, if SBC/Ameritech completes and deploys the OSS enhancements prior to the deployment target dates, the total amount of its potential liability for voluntary incentive payments under the Carrier-to-Carrier Performance Plan may be reduced by up to \$125 million in the third year, depending upon the enhancement and how early it is completed.

384. *Restructuring of OSS Charges.* This condition is designed to assist smaller competitors and new entrants by requiring the merged firm to recover electronic OSS costs on a strict usage basis rather than through a flat monthly fee. Because SBC currently charges a flat monthly fee for access to electronic OSS, parties feared that SBC would spread this practice to Ameritech's region following the merger. Under the condition, therefore, for a period of at least 36 months, SBC/Ameritech will restructure OSS charges to eliminate any flat-rate, up-front charge for the right to use the company's standard electronic interfaces for accessing OSS (*i.e.*, flat-rate monthly charges for access to SBC's Remote Access facility and Information Services Call Center, amounting to approximately \$3600 per month).⁷¹² This condition is not meant to affect the merged firm's ability to recover any OSS-related costs associated with UNEs and

⁷¹⁰ Despite the benefits competing carriers derive from a uniform system of change management, the condition permits a state, if it so desires, to establish its own change management plan. See California PUC July 28 Reply Comments at 6-7. See also SBC/Ameritech Aug. 27 *Ex Parte* at 6.

⁷¹¹ Several competitive carriers objected to the arbitration procedures set forth in the Applicants' initial proposal. See ALTS July 19 Comments at 14; AT&T July 19 Comments, App. A at 39-41; MCI WorldCom July 19 Comments at 34-35; Sprint July 19 Comments at 43, 50-52. Most of these concerns were addressed in the Applicants' August filing. See SBC/Ameritech Aug. 27 *Ex Parte* at 6. Several carriers, for example, are concerned that the arbitration process in OSS implementation phases II (collaborative) and III (deployment) could delay SBC/Ameritech's enhanced OSS deployment. See, *e.g.*, Allegiance July 19 Comments at 7 (fearing SBC/Ameritech delay throughout arbitrations). The Applicants subsequently clarified that the arbitration should last no longer than two months, unless the Chief of the Common Carrier Bureau extends that deadline. Other parties criticized that competitive LECs involved in OSS disputes "would be required to pay for 50 percent of the arbitration costs when they would have absolutely no say in the arbitrator or the procedures to be used." ALTS July 19 Comments at 14. The Applicants subsequently clarified that all parties to the dispute, including competitors, may present disputed issues to the Chief of the Common Carrier Bureau, and the Bureau Chief will approve the arbitrator. In addition, the Applicants clarified that each party will pay its own costs for the arbitration, and the costs of the arbitrator and experts will be borne half by SBC/Ameritech and half by participating competitive LECs. This arbitration process is designed to accommodate the need for rapid resolution in a neutral forum of disputes stemming from SBC/Ameritech's compliance with the conditions relating to OSS enhancements.

⁷¹² See Texas PUC Aug. 5 Comments at 4 (supporting the waiver of charges for electronic access to specified OSS functions during the three-year period).

resold services through its pricing of such elements and services in accordance with applicable federal and state requirements.⁷¹³ SBC/Ameritech is not required to eliminate extra charges for manual processing of service orders, provided that an electronic means of processing such orders is available to carriers. If, however, no electronic interface for processing orders of 30 lines or less is available to a carrier, SBC/Ameritech will eliminate any extra charge for manual processing and shall charge instead the rate for processing similar orders electronically.⁷¹⁴

385. *Training in the Use of OSS for Qualifying Carriers.* As a means of reducing the barriers to new entry in its region, SBC/Ameritech will provide special OSS assistance to any “qualifying” competitive LEC (a competitive LEC having less than \$300 million in total annual telecommunications revenues).⁷¹⁵ Specifically, the merged firm will designate and make available for 36 months at no additional cost a team of OSS experts to assist these qualifying carriers with OSS issues.⁷¹⁶ The condition also obligates SBC/Ameritech to identify and develop training and procedures beneficial to such qualifying carriers. Disputes regarding whether a carrier qualifies as competitive LEC under this condition will be resolved by the appropriate state commission.

386. *Collocation Compliance.* Competing carriers contend that collocation provisioning and costs have been a major impediment to competitive provisioning of local service.⁷¹⁷ To address this concern, SBC and Ameritech have agreed to implement a number of

⁷¹³ This commitment in the Applicants’ July filing referred to a “waiver” of OSS charges, which several commenters understood to mean that costs for developing and providing OSS should not be recoverable through any means. See, e.g., ALTS July 19 Comments at 14; AT&T July 19 Comments, App. A at 45-49; Covad July 22 Comments at 35; Telecomm. Resellers Assoc. July 19 Comments at 34-35. The Applicants subsequently clarified that their original intent was to “restructure,” rather than “waive,” OSS charges. See SBC/Ameritech Aug. 27 *Ex Parte* at 6. Because this condition is designed to assist smaller competitors and new entrants by requiring the merged firm to recover electronic OSS costs on a strict usage basis rather than through the flat monthly fee that SBC currently charges, we find that the Applicants’ clarification does not substantively alter their initial commitment.

⁷¹⁴ See CompTel July 19 Comments at 34; Covad July 22 Comments at 35-36; NorthPoint July 19 Comments at 20-22 (suggesting modification to eliminate manual charges where no electronic access is available). See also Kansas Commission July 19 Comments at 3 (noting that the need for manual access generally results from SWBT’s OSS and not because a carrier prefers manual ordering). As reflected in SBC/Ameritech’s reply comments, this OSS restructuring commitment “creat[es] an additional incentive for CLECs to use electronic interfaces that will, in the long term, both ease and expedite their local entry and reduce industry costs.” SBC/Ameritech July 26 Reply Comments at 55. If we were to require the merged firm to eliminate all processing charges for manual orders, as some commenters request, this would remove the extra incentive for carriers to use electronic OSS access where available. See NALA July 19 Comments at 3-4; Level 3 July 19 Comments at 7; TRA July 19 Comments at 34. We decline to impose a requirement that would have such an effect.

⁷¹⁵ The revenue restriction includes revenue from any affiliates, parents, subsidiaries and telecommunications joint ventures of the competitive LEC.

⁷¹⁶ After commenters expressed concern that the free OSS training described in the Applicants’ July filing lasted only one year, the Applicants extended their commitment to the full 36-month period. See CoreComm July 22 Comments at 11. See also SBC/Ameritech Aug. 27 *Ex Parte* at 6.

⁷¹⁷ See, e.g., ALTS July 19 Comments at 10; Covad July 22 Comments at 14, 19-30 (criticizing Ameritech’s collocation practices); Focal/Adelphia/McLeod July 19 Comments at 16-18 (requesting specific performance intervals, remedies and deadlines for collocation); GST/KMC/Logix/RCN July 19 Comments at 2-4 (noting that, due to incumbents’ delays, collocation provisioning has become a critical issue).

measures to ensure that the companies provide collocation to telecommunications carriers in a lawful and timely manner.⁷¹⁸ Before the merger closing date, SBC and Ameritech will file a tariff or offer to amend interconnection agreements in each SBC/Ameritech state to demonstrate compliance with the Commission's collocation rules.⁷¹⁹ In addition, prior to the merger closing date, an independent auditor, approved by the Chief of the Common Carrier Bureau, will conduct a review and determine whether each company is offering collocation terms and conditions, and has in place methods and procedures, that comply with the Commission's rules.

387. After the merger closing, an independent auditor will develop and implement a comprehensive audit of the merged company's compliance with the Commission's collocation requirements for the first eight months after the closing. The independent auditor will present its final audit report to the Commission, and publicly file a copy with the Secretary, no later than ten months after the merger closing date. If the auditor's report reveals problems with SBC/Ameritech's collocation practices and policies, we fully expect that SBC/Ameritech will implement immediately any necessary corrective action. After reviewing the auditor's findings, the Commission may, of course, decide to take additional action as deemed necessary and appropriate. As an additional incentive for the merged firm to provide efficient collocation,⁷²⁰ SBC/Ameritech will waive the nonrecurring charges for physical, virtual, adjacent and cageless collocation arrangements if the firm misses the collocation due date by more than 60 days.⁷²¹

388. *Most-Favored Nation Arrangements.* This condition, designed to facilitate market entry throughout SBC/Ameritech's region as well as the spread of best practices (as that term is understood by SBC/Ameritech's competitors), has two components. First, where it is feasible given technical limitations, SBC/Ameritech will offer telecommunications carriers operating within its service area any interconnection arrangement or UNE that SBC/Ameritech, as a competitive LEC outside of its incumbent service area, secures from the incumbent LEC and that was not previously made available by the incumbent.⁷²² SBC/Ameritech will make the interconnection arrangement or network element available on the same terms and conditions as

⁷¹⁸ Although several commenters characterize the Applicants' commitment as promising merely to fulfill a pre-existing duty, we note that, since their July filing, the Applicants proposed an additional obligation, waiver of nonrecurring collocation charges, if the merged firm is late in meeting a collocation due date. See, e.g., AT&T July 19 Comments, App. A at 27; CoreComm July 19 Comments at 2-3; Focal July 19 Comments at 16-18; MCI WorldCom July 19 Comments at 8. In addition, by having an independent auditor verify the existence of standard collocation terms and conditions, as well as related methods and procedures, at each company prior to the merger, and then conduct a thorough review of the implementation of the collocation rules after sufficient time has passed for the merged firm to have generated useful data, we also find that this condition will make it easier for the Commission and others to detect non-compliance following the merger.

⁷¹⁹ See *Advanced Services Further Notice*, 14 FCC Rcd at 4771-94, paras. 19-60.

⁷²⁰ See CoreComm July 22 Comments at 5 (noting that new entrants rely on the collocation provisioning intervals of the incumbent to execute their business plans).

⁷²¹ See SBC/Ameritech Aug. 27 *Ex Parte* at 7.

⁷²² To assist competitive LECs in exercising their options, all relevant interconnection agreements will be posted on the Internet by SBC/Ameritech or its out-of-territory affiliate.

the incumbent, with prices determined on a state-specific basis.⁷²³ Second, where it is feasible given technical limitations, SBC/Ameritech will make available to any requesting telecommunications carrier in any of its 13 states any interconnection arrangement or UNE in any other of the same 13 states that was negotiated⁷²⁴ by an affiliate of SBC, subject to state-specific pricing.⁷²⁵ When a carrier selects an interconnection arrangement or network element for an in-region state in which no rate for a comparable arrangement or element has been established, SBC/Ameritech will make the arrangement or element available at the rates in the originating state on an interim basis until the requisite rates are developed.⁷²⁶ Disputes regarding the availability of an interconnection arrangement or unbundled element will be resolved through negotiation between the parties or by the relevant state commission pursuant to section 252.

389. *Multi-State Interconnection and/or Resale Agreements.* Negotiating a separate interconnection agreement between the same parties in multiple states can impose substantial unnecessary costs and delays on competitors and provides incumbent LECs with an incentive to game the process.⁷²⁷ Because this merger increases the number of states in which SBC operates from eight to 13, it will increase the merged firm's incentive and ability to impose unnecessary negotiation costs on its competitors. To neutralize this incentive, in addition to promoting market entry and assisting telecommunications carriers that want to operate in more than one SBC/Ameritech state, SBC/Ameritech will offer requesting telecommunications carriers an interconnection and/or resale agreement covering multiple SBC and/or Ameritech states,⁷²⁸ subject to technical feasibility and state-specific pricing.⁷²⁹ SBC/Ameritech will make a sample generic multi-state agreement available to any requesting carrier no later than 60 days after the

⁷²³ Several commenters opposed a restriction in the Applicants' July filing that limited out-of-territory arrangements only to agreements obtained through arbitration initiated by SBC/Ameritech. See, e.g., Allegiance July 19 Comments at 8; AT&T July 19 Comments, App. A at 93; CoreComm July 19 Comments at 21-23; Sprint July 19 Comments at 37-43. SBC/Ameritech has since removed the arbitration restriction. See SBC/Ameritech Aug. 27 *Ex Parte* at 7.

⁷²⁴ Provisions of interconnection agreements determined by arbitration by state commissions pursuant to section 252 are therefore not eligible for "most-favored nation" treatment. Where parties to the state arbitration proceeding stipulate that certain arrangements have been agreed to by negotiation, however, such arrangements would be eligible for "most-favored nation" treatment.

⁷²⁵ After parties such as the Texas PUC questioned whether this condition would extend to the Proposed Interconnection Agreement (PIA) that was developed in SBC's Texas section 271 proceeding, the Applicants clarified that it would not apply to the PIA, apparently because SBC does not consider the PIA to be an entirely "voluntary" arrangement on SBC's part. See Texas PUC Aug. 5 Comments at 2. See also SBC/Ameritech Aug. 27 *Ex Parte* Att. 1 at 42.

⁷²⁶ See Texas PUC Aug. 5 Comments at 3 (suggesting pricing portability pending rate development in the host state).

⁷²⁷ See MCI WorldCom July 19 Comments at 55 (strongly supporting the principle of a regional interconnection agreement).

⁷²⁸ Responding to commenters, the Applicants amended their commitment in August to make explicit that a multi-state agreement under this condition could extend to any in-region SBC/Ameritech state. See ALTS July 19 Comments at 26 (questioning whether a regional agreement would cover the whole region); Cablevision Lightpath July 26 Reply Comments at 4; CompTel July 19 Comments at 36-38.

⁷²⁹ Even though SBC/Ameritech will offer to negotiate a multi-state interconnection agreement, the affected SBC/Ameritech incumbent LECs may separately sign the agreement, which shall constitute a separate contract for section 252 purposes.

merger closing. Carriers may elect that generic agreement for any number of SBC/Ameritech states, or may negotiate a different multi-state agreement with SBC/Ameritech. In conjunction with the in-region most-favored nation provision described above, carriers that negotiate an interconnection agreement with an SBC/Ameritech incumbent LEC in one state may require SBC/Ameritech to sign the same agreement (exclusive of price) throughout the SBC/Ameritech region.

390. *Carrier-to-Carrier Promotions.* To offset the loss of probable competition between SBC and Ameritech for residential services in their regions and to facilitate market entry, the Applicants propose three promotions designed specifically to encourage rapid development of local competition in residential and less dense areas. SBC/Ameritech will offer these promotions equally to all telecommunications carriers with which it has an existing interconnection and/or resale agreement in an SBC/Ameritech state. Within ten days of the merger closing, SBC/Ameritech will provide each such telecommunications carrier a written offer to amend the carrier's interconnection agreement in that state to incorporate the promotions. The offering window for each promotion will begin 30 days after the merger closing date and run through the later of: (a) 24 months; (b) the date on which SBC/Ameritech is authorized to provide in-region, interLATA services in the relevant state; or (c) the date on which SBC/Ameritech provides facilities-based service to at least one customer in 15 out-of-territory markets. Notwithstanding this offering window, the conditions specify the maximum number of lines per state for which SBC/Ameritech must provide the promotion.⁷³⁰ As indicated below, SBC/Ameritech will make each promotion available equally to any telecommunications carrier that makes a timely request, and each promotion will last 36 months from the date that the promotional loop, resold service or platform is installed or operational.

391. *Carrier-to-Carrier Promotions: Unbundled Loop Discounts.* First, SBC/Ameritech will offer a promotional discount on the monthly recurring charges for unbundled local loops used in the provision of residential local service and not used in combination with SBC/Ameritech's local switching. The promotional discounted prices are set forth in the conditions and are, on average within each state,⁷³¹ 25 percent below the lowest applicable monthly recurring price established by the state commission.⁷³² SBC/Ameritech will

⁷³⁰ In order to provide competitive LECs with advance planning information, the conditions require SBC/Ameritech to provide written or Internet notice to competitive LECs when the promotions (*i.e.*, the promotional loop discount or, taken together, the resale and platform promotions) reach 50 percent and 80 percent of a state's maximum lines.

⁷³¹ In response to the July filing, commenters expressed concern that the 25-percent discount would be averaged across all states. See California PUC July 28 Reply Comments at 4 (recommending that 25-percent discount be averaged on a state-wide, rather than company-wide basis, and be subject to review by the appropriate state commission). See also CoreComm July 22 Comments at 18-20 (suggesting that the Applicants submit the proposed promotional loop rates for every geographic area within their regions). In their August filing, the Applicants provided the exact loop discounts, averaged on a state basis. See SBC/Ameritech Aug. 27 *Ex Parte* at 7.

⁷³² Initially, the Applicants' July proposal provided that the discount would be taken off the monthly recurring rate set by the relevant state commission as of July 1, 1999. The Applicants extended this cutoff date in later filings to account for subsequent state commission action. See California PUC July 28 Reply Comments at 3-4 (requesting

make the promotional loop discount available equally to all telecommunications carriers that request the discount prior to expiration of the offering window or satisfaction of the line threshold limitation, and the promotion will last 36 months for each loop requested in that period.

392. *Carrier-to-Carrier Promotions: Resale Discounts.* As another means of encouraging residential competition in less dense areas, SBC/Ameritech will offer a promotional resale discount on SBC/Ameritech's retail telecommunications services, where such services are resold to residential customers. The promotional resale discount shall be 32 percent from retail rates for an initial period of not less than 24 months, and, for the remaining period of the promotion, a rate equal to 1.1 times the standard wholesale discount rate established for that service by the state commission (*i.e.*, an additional discount of ten percent). SBC/Ameritech will make the promotional resale discount available equally to all telecommunications carriers that request the discount prior to expiration of the offering window or satisfaction of the line threshold limitation, and the promotion will last 36 months.

393. *Carrier-to-Carrier Promotions: UNE Platform.* Competitors have asserted that the availability of end-to-end combinations of UNEs is essential for residential competition. To spur residential competition, SBC/Ameritech will offer end-to-end combinations of all network elements required to be unbundled as of January 24, 1999 (including the UNE platform) to competitive LECs providing residential local service⁷³³ regardless of the outcome of the Commission's UNE Remand proceeding. The price for the promotional UNE platform shall be negotiated or established by the appropriate state commission in accordance with federal and state pricing rules for UNEs.⁷³⁴ SBC/Ameritech will make the promotional UNE platform available equally to all telecommunications carriers that request it prior to expiration of the offering window or satisfaction of the line threshold limitation,⁷³⁵ and the promotion will last 36 months from the date the promotional UNE platform is provisioned.

394. *Offering of UNEs.*⁷³⁶ In order to reduce uncertainty to competing carriers from litigation that may arise in response to the Commission's order in its UNE Remand proceeding,⁷³⁷ from now until the date on which the Commission's order in that proceeding, and any subsequent proceedings, becomes final and non-appealable, SBC and Ameritech will

an extension in order for SBC/Ameritech's loop discounts to account for the California PUC's final rates for unbundled loops). See also SBC/Ameritech Aug. 27 *Ex Parte*, Att. C; SBC/Ameritech Sept. 7 *Ex Parte* at 3.

⁷³³ In response to AT&T's suggestion, the Applicants clarified that the promotional UNE platform may be used to provide exchange access services in combination with residential POTS service and Basic Rate Interface ISDN service. See SBC/Ameritech Aug. 27 *Ex Parte* at 8.

⁷³⁴ See 47 U.S.C. § 252(d)(1).

⁷³⁵ Unbundled network elements made available pursuant to other means (*e.g.*, through state or federal regulation) will not be counted against the line limitation.

⁷³⁶ After receiving public comment on the proposed conditions, the Applicants removed a condition that had been included in their July filing related to ensuring compliance with Commission pricing rules for unbundled network elements. See, *e.g.*, MCI WorldCom July 19 Comments at 49-51.

⁷³⁷ In *Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Second Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (1999).

continue to make available to telecommunications carriers each UNE that was available under SBC's and Ameritech's interconnection agreements as of January 24, 1999, even after the expiration of existing interconnection agreements, unless the Commission removes an element from the list in the UNE Remand proceeding or a final and non-appealable judicial decision determines that SBC/Ameritech is not required to provide that UNE in all or a portion of its operating territory.⁷³⁸

395. *Alternative Dispute Resolution Through Mediation.* As a means of streamlining and expediting resolution of carrier-to-carrier disputes, SBC/Ameritech will offer telecommunications carriers, subject to the appropriate state commission's approval and participation, an option of resolving interconnection agreement disputes through a state-supervised mediation dispute resolution process.⁷³⁹ This mediation process supplements, rather than supersedes, any other options at the carrier's disposal for addressing interconnection disputes with SBC or Ameritech, including negotiated dispute resolution mechanisms. We note that no state or competitive LEC is required to adopt or participate in this process.⁷⁴⁰

396. *Shared Transport.*⁷⁴¹ Under this condition, no later than the merger closing date, Ameritech will file tariffs to provide shared transport to telecommunications carriers using a surrogate billing method in each Ameritech state. Within one year of the merger closing date, SBC/Ameritech will provide shared transport utilizing an advanced intelligent network software solution in each Ameritech state. This condition also obligates Ameritech to provide shared transport until a final order of the Commission or a final and non-appealable judicial decision

⁷³⁸ We disagree with commenters that claim that this condition offers no real benefit because the Applicants made similar promises in prior letters to the Chief of the Common Carrier Bureau. See AT&T July 19 Comments at 8-9; MCI WorldCom July 19 Comments at 48; Sprint July 19 Comments at 32. By making this obligation a condition to our merger approval, the Applicants become subject to the Commission's full enforcement authority. Moreover, the condition obligates the Applicants to make the network elements available even after the expiration of an interconnection agreement.

⁷³⁹ Through the voluntary participation of state commission staff, we anticipate that this condition will help resolve some disputes quickly without the need for prolonged arbitrations or litigations. See Telecommunications Resellers Assoc. July 19 Comments at 36 (predicting that the mediation process would cut the costs and time associated with resolving disputes through arbitration or litigation). We therefore reject AT&T's and MCI WorldCom's claims that the condition as proposed will prove ineffectual. See AT&T July 19 Comments, App. A at 92; MCI WorldCom July 19 Comments at 54.

⁷⁴⁰ See SBC/Ameritech Aug. 27 *Ex Parte* at 8.

⁷⁴¹ Shared transport means transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches and between tandem switches in the incumbent LEC's network. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460, 12453, para. 27 (1997), *aff'd*, *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 597 (8th Cir. 1998), *vacated*, *Ameritech Corp. v. FCC*, 119 S.Ct. 2016 (Jun. 1, 1999); *In the Matter, on the Commission's Own Motion, to Consider the Total Service Long Run Incremental Costs and To Determine the Prices of Unbundled Network Elements, Interconnection Services, Resold Services, and Basic Local Exchange Services for Ameritech Michigan*, Case No. U-11280, 1998 Mich. PSC LEXIS 46, 183 P.U.R.4th 1 (Mich. Pub. Serv. Comm'n Jan. 28, 1998).

determines that SBC/Ameritech is not required to provide shared transport in all or a portion of its operating territory.⁷⁴²

397. *Access to Cabling in Multi-Unit Properties.* In order to provide information regarding possible options for additional competition in the provision of local service to multi-unit properties, SBC/Ameritech will conduct a trial in five cities that will provide telecommunications carriers with access at a single point of interconnection to cabling owned or controlled by SBC/Ameritech in multi-tenant residential and business properties.⁷⁴³ As a separate commitment, SBC/Ameritech will design and install all new cabling owned or controlled by SBC/Ameritech in a manner so that it can be accessed by any telecommunications carrier at a single point of interconnection, located at the minimum point of entry.⁷⁴⁴

3. Fostering Out-of-Territory Competition

398. *Out-of-Territory Competitive Entry (National-Local Strategy).* As a condition of this merger, within 30 months of the merger closing date the combined firm will enter at least 30 major markets outside SBC's and Ameritech's incumbent service area as a facilities-based provider of local telecommunications services to business and residential customers. This will ensure that residential consumers and business customers outside of SBC/Ameritech's territory benefit from facilities-based competitive service by a major incumbent LEC. This condition effectively requires SBC and Ameritech to redeem their promise that their merger will form the basis for a new, powerful, truly nationwide multi-purpose competitive telecommunications carrier. We also anticipate that this condition will stimulate competitive entry into the SBC/Ameritech region by the affected incumbent LECs.

399. Under this condition, SBC and Ameritech will select the 30 out-of-territory markets from the list of 50 major markets that they included in their proposal.⁷⁴⁵ As part of the combined firm's entry into each of these new markets, SBC and Ameritech will either meet certain verifiable entry requirements in each market (*i.e.*, installing or obtaining switching

⁷⁴² Our adoption of this condition in the instant merger proceeding should not be construed as Commission approval of the lawfulness of Ameritech's current shared transport policy.

⁷⁴³ After several commenters questioned whether the trial was likely to have any meaningful effect on competitive options for consumers in multiple dwelling units within the SBC/Ameritech region, the Applicants amended their commitments. *See, e.g.*, ALTS July 19 Comments at 26-28. The Chief of the Common Carrier Bureau will now resolve any disputes that may arise regarding the trial, such as disputes over the cities selected for the trial. For new installations, the Applicants also agreed to provide a single point of interconnection at the minimum point of entry, and to extend their commitment to include new cables installed or controlled by SBC/Ameritech in a campus of garden apartment dwelling units. *See* GST/KMC/Logix/RCN July 26 Reply Comments at 3-4; NextLink/ATG July 19 Comments at 35-36; Winstar July 19 Comments at 17 (urging minimum point of entry); Optel July 19 Comments at 7 (requesting inclusion of "campus style" properties). *See also* SBC/Ameritech Aug. 27 *Ex Parte* at 8.

⁷⁴⁴ There may be multiple points of entry where a property owner requests diversity.

⁷⁴⁵ The list contains two markets – Cincinnati and Las Vegas – that are located within SBC's or Ameritech's in-region states but outside either company's traditional service area. *See* Consumer Coalition July 19 Comments at 3, *Aff.* at 26-27 (suggesting that SBC/Ameritech be required to enter in-region markets controlled by others).

capability; providing facilities-based service to each of three business or residential customers; collocating in each of ten wire centers; offering facilities-based service to all business and all residential customers served by each of those ten wire centers; and offering service, whether by resale, unbundled elements or facilities, to all business and all residential customers within the entire service area of the incumbent RBOC or Tier 1 incumbent LEC in the market⁷⁴⁶), or make voluntary incentive payments to a state-designated fund (or as governed by state law) in the amount of \$110,000 per day for each missed entry requirement, for a total of \$1.1 million per entry requirement per market. SBC/Ameritech would therefore be obligated to pay \$39.6 million if it missed all 36 entry requirements in a market, or nearly \$1.2 billion for missing the entry requirements in all 30 markets. The Applicants' implementation schedule requires the combined firm to enter Boston, Miami and Seattle within 12 months after the merger closing, an additional 12 markets within 18 months of closing, and all 30 markets by the later of 30 months after the merger closing date or 60 days following the company's authorization to provide in-region, interLATA services in states representing at least 60 percent of all access lines served by the combined firm's incumbent LECs.

4. Improving Residential Phone Service

400. *Pricing of InterLATA Services.* As a direct benefit to consumers, particularly low-income consumers and low-volume long distance callers, this condition provides that SBC/Ameritech will not charge residential customers a minimum monthly or minimum flat rate charge for long distance service for a period of not less than three years.⁷⁴⁷ This requirement should not only benefit those customers that make few long distance calls, but also should help to ensure that long distance services continue to be available to all consumers at competitive prices.⁷⁴⁸

401. *Enhanced Lifeline Plans.* Designed specifically to ensure that the benefits of the merger extend to low-income residential customers throughout all of SBC's and Ameritech's regions, this condition requires the merged firm to offer each of its 13 in-region states a plan to provide discounts on basic local service for eligible customers.⁷⁴⁹ SBC/Ameritech will offer a low-income Lifeline universal service plan modeled after the Ohio Universal Service Assistance (USA) Lifeline plan that Ameritech and Ohio community groups negotiated in 1994 and later revised to adjust to the 1996 Act. It will also incorporate elements from the December 1998 Ohio Commission Order addressing the Ohio USA plan. Specifically, SBC/Ameritech will offer

⁷⁴⁶ For enforcement purposes, the conditions break down this obligation into, for both business and residential customers, six entry requirements which each represent service to a sixth of the remaining wire centers required to be served.

⁷⁴⁷ This requirement does not prohibit the merged firm from offering its customers an optional, voluntary pricing plan that may include a minimum monthly charge, minimum flat rate charge, or a prepaid calling card.

⁷⁴⁸ See OWL July 19 Comments at 1 (lauding condition as one that will protect consumers and ensure "telecommunication services to all segments of our society at competitive prices.").

⁷⁴⁹ State commissions are free to accept or reject the plan outlined in these conditions. See Kansas Commission July 19 Comments at 4 (observing that a program similar to Ohio's Lifeline USA plan would reduce lifeline benefits to Kansas customers).

to provide a discount equal to the price of basic residential measured rate service, excluding local usage, in each state, up to a maximum discount of \$10.20 per month (including all federal, state and company contributions). Although the Applicants' initial commitment was limited to the subscriber eligibility, discounts and eligible services features of the Ohio USA Lifeline plan, after the public comment period, SBC and Ameritech extended the offer to include certain other commitments.⁷⁵⁰

402. Under the revised condition, SBC/Ameritech will permit a Lifeline customer with past-due bills for local service to restore local service after payment of no more than \$25 and an agreement to repay the balance of local charges in six equal monthly payments. Lifeline customers also will not be required to pay a deposit for local service if they elect toll blocks. SBC/Ameritech will allow prospective Lifeline customers to verify their eligibility on a written form, and SBC/Ameritech will give those forms to state agencies that administer qualifying programs so that the agencies can distribute the forms to their clients.⁷⁵¹ SBC/Ameritech also will negotiate with state agencies administering qualifying programs to procure an on-line verification process. Easing the financial burden for prospective Lifeline customers, SBC/Ameritech will provide both a toll-free telephone number for prospective customers to inquire about or subscribe to the program and a toll-free fax line for customers to send program documentation, and new customers will not be required to pay a deposit to obtain local service. SBC/Ameritech will publicize the program in each state with an annual promotional budget that is proportional to the annual promotional budget in Ohio.⁷⁵² In addition to including Lifeline information on customer service center voice response units where practical and appropriate, SBC/Ameritech also will automatically upgrade current Lifeline customers to the new program where it is evident that doing so will unambiguously improve the customer's situation. For each state that accepts SBC/Ameritech's offer, the company will maintain the plan for a period of not less than 36 months.

403. *Additional Service Quality Reporting.* As a safeguard against potential deterioration in SBC's or Ameritech's quality of service as a result of the merger, and to promote affirmative service quality improvements, this condition requires SBC/Ameritech to report additional benchmark and service-quality information. First, SBC/Ameritech will report, on a quarterly basis, the quality of service that it provides to customers. SBC/Ameritech will develop and file with this Commission and state commissions quarterly state-by-state service quality reports in accordance with the National Association of Regulatory Utility Commissioners

⁷⁵⁰ See, e.g., Low Income Coalition July 19 Comments at 4-5 (requesting expansion of the condition to cover all the requirements of the Ohio USA Lifeline plan); Edgemont July 19 Comments at 8 (noting that Ohio's successful USA plan is far more than the eligibility, discounts and eligible services negotiated in 1994). See also Consumer Coalition July 19 Comments at 4, Aff. at 28-30 (expressing confusion over what parts of the evolving Ohio plan were included within the Applicants' proposal).

⁷⁵¹ We note that SBC/Ameritech will provide these forms in English and such other languages as are prevalent in the applicable service area.

⁷⁵² See Edgemont July 19 Comments at 6-8 (requesting specific promotional requirements).

(NARUC) Technology Policy Subgroup's November 1998 "Service Quality White Paper."⁷⁵³ Through this reporting program, SBC/Ameritech will make publicly available in a timely manner key information about its service quality, including installation and repair performance, switch and transmission facility outages, consumer complaints, and answer time performance.⁷⁵⁴ We anticipate that, by providing consumers and states with information about SBC/Ameritech's service quality, this condition will, at a minimum, deter any potential service quality degradation and motivate the merged firm to improve its service quality where possible.⁷⁵⁵

404. In addition, SBC/Ameritech will file reports showing the service quality provided to interexchange carriers, which will include data regarding the installation and maintenance of switched, high speed special, and special access services.⁷⁵⁶ By receiving such information on a quarterly basis, the Commission and others can take appropriate action in the event such reports show service quality degradation. SBC/Ameritech also will continue reporting ARMIS data on an operating-company basis in order to preserve the number of observable points of operating-company behavior for benchmarking purposes.

405. *NRIC Participation.* Through this condition, we expect that SBC/Ameritech will demonstrate and further its commitment to maintain reliable, high-quality networks and services. The Applicants will continue their participation in the Network Reliability and Interoperability Council (NRIC), a committee organized to make recommendations to the Commission on how to ensure "optimal reliability, interoperability and interconnectivity of, and accessibility to, public telecommunications networks."⁷⁵⁷ SBC/Ameritech's continued participation will provide assurance that the merged firm will review the causes of network outages in a timely manner and adopt industry best practices designed to promote reliable, high quality services.

⁷⁵³ In the Preamble to the Service Quality White Paper, NARUC states that a service quality reporting program will "allow interested parties to assess current service quality levels among the states, and identify increasing or decreasing trends over time." National Association of Regulatory Utility Commissioners, SERVICE QUALITY WHITE PAPER (Nov. 1998); see also National Regulatory Research Institute, TELECOMMUNICATIONS SERVICE QUALITY 127-60 (1996) (noting that information facilitates competition on quality).

⁷⁵⁴ See SBC/Ameritech July 26 Reply Comments at 46-47. See also CWA July 19 Comments at 2-3 (noting that the additional reporting will assist regulators and consumer groups in ensuring that the merged firm abides by its commitments to continue to invest in a high-quality network serving all market segments).

⁷⁵⁵ See, e.g., American Association of Retired Persons, PROMISES AND REALITIES 46-49 (1999) (analyzing service quality performance of Pacific Bell after the merger with SBC).

⁷⁵⁶ See ARMIS 43-05 Service Quality Report, Table 1. In the ARMIS 43-05 Service Quality Report, price cap incumbent LECs report the installation and maintenance of switched access, high speed special access, and special access services provided to interexchange carriers. See MCI WorldCom July 19 Comments at 24 (requesting that SBC and Ameritech provide reporting on special access and switched access service quality).

⁷⁵⁷ Network Reliability and Interoperability Council, Revised Charter for the Network Reliability and Interoperability Council (visited July 25, 1999). See Network Reliability and Interoperability Council, Charter (1998). The NRIC is the successor organization to the Network Reliability Council, a federal advisory committee chartered to study the reliability of the public telecommunications network. See Network Reliability & Interoperability Council, NETWORK INTEROPERABILITY: THE KEY TO COMPETITION (1997); Network Reliability Council, NETWORK RELIABILITY: THE PATH FORWARD (1996); Network Reliability Council, A REPORT TO THE NATION (1994); see also 47 C.F.R. § 63.100 (establishing network outage reporting requirements).

5. Ensuring Compliance with and Enforcement of these Conditions

406. The Commission is firmly committed to enforcing the Communications Act and the public interest standard that forms its foundation. Attaching conditions to a merger without an efficient and judicious enforcement program would impair the Commission's ability to protect the public interest. The conditions therefore establish compliance and enforcement mechanisms that not only will provide SBC/Ameritech with a strong incentive to comply with each of its requirements, but also will facilitate the Commission's oversight of the Applicants' obligations under these conditions. As a general matter, the conditions place the responsibility of taking active steps to ensure compliance on SBC/Ameritech by: (1) establishing a self-executing compliance mechanism; (2) requiring an independent audit of the Applicants' compliance with the conditions; and (3) providing self-executing remedies for failure to perform an obligation.

407. *Compliance Program.* For the benefits of the conditions to outweigh the potential public interest harms of the merger, SBC/Ameritech must take aggressive steps to implement every aspect of these conditions and to comply with both the letter and the spirit of its obligations. In our view, the benefits of these conditions depend entirely upon the Applicants' compliance. Because the conditions that we adopt today are spelled out in detail with their satisfaction measured by objective criteria, and because failing to comply with the conditions could expose SBC/Ameritech to a material loss of revenue, we believe that SBC/Ameritech has a strong incentive to implement an aggressive and effective compliance program.⁷⁵⁸

408. As part of the conditions, SBC and Ameritech will establish a corporate compliance program to identify all applicable compliance requirements, establish and maintain the internal controls needed to ensure compliance, evaluate the merged firm's compliance on an on-going basis, and take any corrective actions necessary to ensure full and timely compliance.⁷⁵⁹ SBC/Ameritech will appoint a "Compliance Officer" with sufficient rank and

⁷⁵⁸ A corporate compliance program is a well-established technique for ensuring that an organization takes active steps to comply with legal and regulatory requirements. The Commission has used compliance programs as a tool for addressing potential problem areas. See SBC Communications, *Order*, FCC 99-153 (rel. June 28, 1999); Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90, Attachment A (rel. May 7, 1999); Long Distance Direct, Inc., Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 314 (1998); see also Liability of KCIT Acquisition Company, *Memorandum Opinion and Order*, DA 99-1545 (Mass Med. Bur. 1999). In addition, compliance programs are routinely used to ensure compliance with antitrust laws. See *U.S. v. 21st Century Bidding Corp.*, No. 98-2752, 1999 WL 135165 (D.D.C. Feb. 25, 1999); *United States v. Seminole Fertilizer Corp.*, No. 97-1507-Civ-T-17E, 1997 WL 692953 (M.D.Fla. Sep. 19, 1997); *United States v. Universal Shipper's Ass'n*, Civil Action No. 96-1154-A, 1996 WL 760279 (E.D.Va. Nov. 6, 1996).

⁷⁵⁹ Corporate compliance programs should both deter potential misconduct within the corporation, and provide a method for internal policing. Components of a corporate compliance program include, for example, corporate conduct codes, employee training, record-keeping, standard operating procedures followed by employees, individual work assignments, monitoring programs, and internal compliance audits. See Richard S. Gruner, *Designing Compliance Programs*, Practising Law Institute: Corporate Law and Practice Course Handbook Series, 1100 PLI/Corp 151 (1999); Don Zarin, *Doing Business Under the Foreign Corrupt Practices Act: Compliance*

experience to supervise its corporate operations and to ensure that the business units carry out their responsibilities under the conditions.⁷⁶⁰ This Compliance Officer will prepare and publicly file with the Commission an annual compliance report addressing the corporation's compliance with the conditions and the sufficiency of the corporation's internal controls for ensuring continued compliance.⁷⁶¹

409. We expect that SBC and Ameritech will put into place a reasonably designed, implemented, and self-enforced compliance program that will detect potential noncompliance in time for SBC/Ameritech to notify the Commission and take corrective action before such noncompliance impairs the benefits of these conditions. To provide additional assurances to the public regarding SBC/Ameritech's compliance, however, the Commission plans to conduct targeted audits of various aspects of the Applicants' compliance programs.⁷⁶² Only a strong corporate compliance program, in conjunction with the independent audit and other enforcement mechanisms, will enable consumers to realize the full benefit of the conditions.

410. *Independent Auditor.* Because the public interest benefit of these conditions depends entirely upon SBC/Ameritech's compliance, the conditions also establish an independent oversight program. SBC and Ameritech will retain an independent auditor⁷⁶³ to conduct an annual audit to provide a thorough and systematic evaluation of SBC/Ameritech's

Programs, Practising Law Institute: Corporate Law and Practice Course Handbook Series, 943 PLI/Corp 525 (1996). See also Sprint July 19 Comments at 63-65 (recommending the appointment of a senior individual as a compliance officer).

⁷⁶⁰ On July 13, 1999, SBC/Ameritech appointed a high-ranking corporate officer, Mr. Charles Foster, Group President-SBC Communications, as the officer responsible for overseeing implementation of and compliance with the proposed conditions. See Letter from Charles E. Foster, Group President, SBC Communications Inc., to Magalie Roman Salas, Secretary, FCC (July 29, 1999). We note that, as an additional safeguard, the Board of Directors of SBC/Ameritech will oversee the activities of the Compliance Officer. See *In re Caremark Internat'l Inc. Derivative Litigation*, 698 A.2d 959, 967-70 (Del. Ch. 1996) (establishing a duty for corporate directors to implement an effective compliance program); see also Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees, REPORT AND RECOMMENDATIONS (1999) (recommending actions by corporate boards to improve oversight and monitoring of corporate compliance).

⁷⁶¹ The Compliance Report also will include a statement of the cost-savings achieved during the course of the calendar year in order to assist the Commission and the public in assessing any efficiencies arising out of this merger. This report will constitute, as required by industry standards, SBC/Ameritech's written assertion regarding its compliance with the conditions contained herein and the effectiveness of SBC/Ameritech's internal control structure over compliance. See American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.01.

⁷⁶² See e.g., Focal *et al.* July 26 Reply Comments at 6 (recommending that the Commission strengthen the proposed compliance and enforcement plan).

⁷⁶³ See Letter from Charles E. Foster, Group President, SBC Communications Inc. to Mr. Robert C. Atkinson, Deputy Chief, Common Carrier Bureau, FCC (Aug. 10, 1999); Letter from Charles E. Foster, Group President, SBC Communications Inc. to Mr. Robert C. Atkinson, Deputy Chief, Common Carrier Bureau, FCC (Aug. 18, 1999) (proposing independent auditor); Letter from Robert C. Atkinson, Deputy Chief, Common Carrier Bureau, FCC, to Charles E. Foster, Group President, SBC Communications Inc. (Aug. 24, 1999) (approving proposed choice of independent auditor).

compliance with the conditions and the sufficiency of SBC/Ameritech's internal controls.⁷⁶⁴ Acting pursuant to its delegated authority, the Common Carrier Bureau will approve the independent auditor and oversee the conduct of the independent audit, which will include reviewing the scope and quality of the auditor's work.⁷⁶⁵ The independent auditor's final report, which will be publicly available, will contain sufficient detail for the Commission and the public to understand the extent of the auditor's testing and evaluation procedures. In addition, the findings in the auditor's report, or the review of the auditor's working papers, could form the basis of enforcement actions.⁷⁶⁶ SBC/Ameritech and the independent auditor also will meet for a post-audit conference to assess the conduct of the audit and the need for any modifications to the audit program. Based on these requirements, we find that the conditions provide for effective Commission oversight of the audit process and a mechanism for revising the audit programs and procedures based on our experience over time.⁷⁶⁷

411. The independent auditor will conduct its examination in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA").⁷⁶⁸ Specifically, the independent auditor will conduct a "compliance attestation,"⁷⁶⁹ which requires issuing a report that "expresses a conclusion about the reliability of a written assertion that is the responsibility of another party."⁷⁷⁰ For most conditions, the independent auditor will conduct

⁷⁶⁴ By "internal control," we mean the process implemented by a company's board of directors, management, and other personnel designed to provide reasonable assurance regarding, in this instance, the company's compliance with the requirements established in this Order and all applicable laws and regulations. See American Inst. of Certified Pub. Accountants, CONSIDERATION OF INTERNAL CONTROL IN A FINANCIAL STATEMENT, AU § 319.06 (1998); COMPLIANCE ATTESTATION, AT § 500.01, n.1 (1999). The independent auditor will examine, for example, SBC/Ameritech's compliance with, as well as its ability to administer, the requirements of the Carrier-to-Carrier Performance Plan to report accurate and relevant performance data. See, e.g., U.S. GAO, ASSESSING THE RELIABILITY OF COMPUTER-PROCESSED DATA, GAO/OP-8.1.3 (Apr. 1991) (providing guidance for auditing computer-processed data). Strong internal controls are necessary both to ensure that SBC/Ameritech takes affirmative steps to comply with the conditions and to counteract its incentive to delay local competition in its region. Managerial philosophy, commitment to employee competence, ethical values, oversight by the board of directors, assignment of authority, and human resources practices work together to provide the discipline and structure necessary for ensuring compliance with the conditions. See American Inst. of Certified Pub. Accountants, ATTESTATION ENGAGEMENTS, AT § 100.11-.12, .33-40; CONSIDERATION OF INTERNAL CONTROL IN A FINANCIAL STATEMENT, AU § 319.

⁷⁶⁵ See 47 C.F.R. § 0.91; *Amendment of Parts 0, 1 and 64 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau, and Technical Corrections and Deletions*, Report and Order, 5 FCC Rcd 4601 (1990). See also Letter from Robert C. Atkinson, Deputy Chief, Common Carrier Bureau, FCC, to Charles E. Foster, Group President, SBC Communications Inc. (Aug. 24, 1999).

⁷⁶⁶ See *Contel Telephone Operating Companies, Notice of Apparent Liability for Forfeiture*, 6 FCC Rcd 1880 (1991) (initiating an enforcement action based on the review of an independent auditor's working papers).

⁷⁶⁷ See AT&T July 19 Comments at 14; GST/KMC/Logix/RCN July 19 Comments at 4.

⁷⁶⁸ The Commission's rules already require independent auditors to use generally accepted auditing standards ("GAAS") for conducting audits of an incumbent LEC's compliance with our accounting safeguards. 47 C.F.R. § 64.904(a); see *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, Report and Order*, 6 FCC Rcd 7571, para. 24 (1991) ("*Computer III Remand Order*").

⁷⁶⁹ American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.

⁷⁷⁰ American Inst. of Certified Pub. Accountants, ATTESTATION STANDARDS, AT § 100.01. For the purposes of these conditions, we consider SBC/Ameritech's annual Compliance Report to be its written assertion. Consistent

this examination using the “examination engagement”⁷⁷¹ method to evaluate SBC/Ameritech’s compliance, and to issue a “positive opinion” (with exceptions noted) in its final report. The conditions, however, require the more thorough “agreed-upon procedures” engagement⁷⁷² to evaluate SBC/Ameritech’s compliance with the separate advanced services affiliate requirements. In this way, the conditions emulate the Federal-State joint audit required by section 272(d).⁷⁷³

412. The independent audit requirement establishes an efficient and cost-effective mechanism for providing reasonable assurances of SBC/Ameritech’s compliance with its obligations under the conditions.⁷⁷⁴ SBC/Ameritech is required to inform the auditor of its progress at meeting the specific deadlines and requirements set forth in the conditions, which will enable the independent auditor to detect potential noncompliance in a timely manner. Pursuant to its obligations as the designated auditor, the independent auditor will notify the Commission immediately of the problem areas and any corrective action undertaken.⁷⁷⁵ By requiring SBC and Ameritech to pay for the audit, the conditions place the costs of compliance on the Applicants instead of their competitors or taxpayers. We note that, pursuant to our regulatory fee schedule, SBC/Ameritech will reimburse the U.S. Treasury for any review and audit work performed by the Commission staff.⁷⁷⁶

413. *Voluntary Payment Obligations.* For many of the conditions, the Applicants proposed a voluntary incentive payment structure, which could expose SBC/Ameritech to significant financial liability, if the merged firm fails to satisfy an obligation in a timely manner. For example, as described above, under its National-Local Strategy, SBC/Ameritech will make voluntary incentive payments, valued at a maximum of \$39.6 million per market, for missing a market’s entry requirements. In addition, SBC/Ameritech will incur similar voluntary payment obligations for failing to provide service to competitive LECs that meets the standards of the Carrier-to-Carrier Performance Plan (up to a total of \$1.125 billion over three years, with an

with AICPA standards, the independent auditor’s report “does not provide a legal determination of [SBC/Ameritech’s] compliance” with the specified requirements; however, the auditor’s findings may aid the Commission in making such a determination. American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.03; *see also* American Inst. of Certified Pub. Accountants, ILLEGAL ACTS BY CLIENTS, AU § 317.03 (“Whether an act is, in fact, illegal is a determination that is normally beyond the auditor’s competence.”). *See also* Sprint July 19 Comments at 62 (citing *Joint Cost Order* at para. 253); AT&T July 19 Comments at 14.

⁷⁷¹ *See* American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.27; ATTESTATION ENGAGEMENTS, AT § 100.53 (noting that an examination engagement is used to reduce the attestation risk to a low level).

⁷⁷² *See* American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.15-20; AGREED-UPON PROCEDURES ENGAGEMENTS, AT § 600. An agreed-upon procedures engagement is more thorough than an examination engagement because the concept of materiality does not apply to any reported findings. *See* American Inst. of Certified Pub. Accountants, AGREED-UPON PROCEDURES ENGAGEMENTS, AT § 600.27.

⁷⁷³ *See* 47 U.S.C. § 272(d); *see also* 47 C.F.R. §§ 53.209-213; *Accounting Safeguards Order* at paras. 197-205.

⁷⁷⁴ ALTS July 19 Comments at 10.

⁷⁷⁵ AICPA standards recognize occasions in which an independent auditor has a duty to notify others, including regulatory agencies, of problems uncovered during an audit. *See* American Inst. of Certified Pub. Accountants, ILLEGAL ACTS BY CLIENTS, AU § 317.23-24.

⁷⁷⁶ 47 C.F.R. § 1.1105.

offset for early OSS deployment), and for failing to meet the deployment schedule for its OSS enhancements (up to a total of \$20 million per obligation). We expect that the size and scope of these potential voluntary payments will provide a strong incentive for SBC/Ameritech to ensure that it fully complies with both the letter and the spirit of the conditions.⁷⁷⁷ The conditions recognize that SBC/Ameritech is strictly liable for making any and all payments arising out of its nonperformance.⁷⁷⁸ Moreover, failing either to satisfy the underlying obligation or to make timely voluntary payments will subject the Applicants to potential liability in the same way SBC/Ameritech would be liable for violating any other Commission order, rule, or regulation.

414. We expect that SBC/Ameritech will take all necessary measures, such as amending tariffs and interconnection agreements, to give the conditions their full legal effect in a timely manner. Although we note that the Commission may grant an extension of time for a requirement under the conditions, SBC/Ameritech bears a heavy burden of demonstrating good cause.⁷⁷⁹ We expect that this heavy burden of persuasion, coupled with the compliance mechanisms and significant financial exposure, will ensure that the public enjoys the full benefits of these conditions in a timely manner. We also expect that the self-executing remedial measures, such as SBC/Ameritech's voluntary incentive payment obligations, will limit any delay arising from extensive litigation arising from potential violations.

415. *Other Mechanisms.* We emphasize that the enforcement and compliance programs established in these conditions in no way supersede or replace the Commission's enforcement and investigative powers, but merely supplement our usual processes. The Commission may, at its discretion and subject to its normal procedures, take additional enforcement action against SBC/Ameritech for failing to comply with any provision of this Order, including extending the sunset provisions, imposing fines and forfeitures,⁷⁸⁰ issuing cease-and-desist orders, modifying the conditions,⁷⁸¹ awarding damages,⁷⁸² or requiring appropriate remedial action. In addition, members of the public may pursue a claim in accordance with either section 207 or section 208 of the Act.⁷⁸³ We do not expect that any enforcement penalties or compliance mechanisms will become merely an acceptable cost of doing business, and we note that the conditions require all such costs to be excluded from SBC/Ameritech's rates. In this way, the enforcement plan rightly ensures that consumers will not be forced to bear the costs of SBC/Ameritech's mistakes.

416. *Sunset.* Unless otherwise specified, each obligation under these conditions will sunset after 36 months of benefit, which may be tolled or extended by the Commission for a

⁷⁷⁷ See Allegiance July 19 Comments at 11-12 (recommending the calculation of payment obligations on a per-day basis).

⁷⁷⁸ The Commission may, however, grant a waiver of SBC/Ameritech's voluntary payment obligation if SBC/Ameritech can demonstrate that the failure was due to an Act of God.

⁷⁷⁹ See MCI WorldCom July 19 Comments at 61, 63.

⁷⁸⁰ 47 U.S.C. § 503.

⁷⁸¹ 47 U.S.C. §§ 316, 416(b).

⁷⁸² 47 U.S.C. § 209.

⁷⁸³ See MCI WorldCom July 19 Comments at 61-63.

period of time commensurate with any noncompliance by SBC/Ameritech. Maintaining a full three-year period of benefit is critical for the conditions to ameliorate the potential public interest harms of the merger. Thus, in the event that SBC/Ameritech fails to comply fully with its obligations, the Commission may, in its discretion, either on its own motion or in response to a petition, toll the effective sunset date of the relevant condition, and related conditions, to ensure that the public enjoys the full three-year term of the benefits.

417. *Effect of The Conditions.* As discussed above, these conditions are intended to be a floor and not a ceiling. The Applicants must abide by state rules, even though the rules may touch on identical subjects, unless the merged entity would violate one of these conditions by following the state rule. The conditions are also not intended to limit the authority or jurisdiction of state commissions to impose or enforce additional requirements stemming from a state's review of the proposed merger.⁷⁸⁴ To the extent that a requirement in these conditions duplicates a requirement imposed by a state such that these conditions and state conditions grant parties similar rights against SBC/Ameritech, the affected parties must elect either to receive the benefit under either these conditions or state law. For example, SBC/Ameritech will not be required to provide two promotional loop discounts simultaneously for the same loop. If, on the other hand, SBC/Ameritech fails to meet a stated performance standard under the Carrier-to-Carrier Performance Plan for a measurement that is replicated in a state performance plan, SBC/Ameritech would face repercussion under both plans.

418. Although the merged firm will offer to amend interconnection agreements or make certain other offers to state commissions in order to implement several of the conditions, nothing in the conditions obligates carriers or state commissions to accept any of SBC/Ameritech's offers. The conditions, therefore, do not alter any rights that a telecommunications carrier has under an existing negotiated or arbitrated interconnection agreement. Moreover, the Applicants also agree that they will not resist the efforts of state commissions to administer the conditions by arguing that the relevant state commission lacks the necessary authority or jurisdiction.⁷⁸⁵

C. Benefits of Conditions

419. We conclude that, with the conditions that we adopt in this Order, the merger of SBC and Ameritech is likely to be beneficial for consumers and spur competition in the local and advanced services markets. Given that the conditions will substantially mitigate the potential public interest harms of the proposed merger and will result in affirmative public benefit, we conclude that the Applicants have demonstrated that the proposed merger, on balance, will serve the public interest, convenience and necessity.

⁷⁸⁴ See *Ohio PUC Merger Order*; *ICC Merger Order*; *Nevada PUC Merger Order* (establishing conditions for state approval of SBC's acquisition of Ameritech).

⁷⁸⁵ See APSC July 19 Comments at 1-3 (questioning whether Arkansas's Telecommunications Regulatory Reform Act limited the Arkansas Public Service Commission's ability to take certain measures to enforce these conditions).

1. Mitigating Harm from Loss of Potential Competition

420. As noted above, the proposed merger will remove, in many local markets throughout SBC's and Ameritech's territories, a current significant competitive threat and a probable future entrant. Armed with the inside knowledge of how to overcome roadblocks to local competition, SBC and Ameritech are especially qualified to compete successfully against other incumbent LECs.

421. We find that, while not substituting fully for the loss of direct competition between SBC and Ameritech, the conditions we adopt will significantly mitigate any potential public interest harms. After the merger, these conditions require the merged firm to open its markets to others while at the same time entering markets outside of its region. Specifically, the conditions require the merged SBC/Ameritech to enter 30 out-of-region markets as a competitive LEC within 30 months of the merger's closing. Although we concluded above that the Applicants' initial pledge to implement the National-Local Strategy offered no merger-specific competitive benefit, as augmented by the conditions, the plan will motivate the combined company to enter markets more quickly than the companies, separately, would have entered absent the merger. For example, the Applicants shortened the timetable pledged in their initial Application by six months and have agreed to voluntary incentive payments that could amount to nearly \$1.2 billion if SBC/Ameritech fails to implement the strategy in all thirty markets. Thus, the merged firm will face significant economic repercussion if it fails to achieve a certain level of entry in each market according to a specified implementation schedule. These benefits to some extent counterbalance the loss of direct competition between SBC and Ameritech, particularly if the outcome of SBC/Ameritech's implementation of the condition is faster retaliation within its home region by the major incumbent LECs whose home territories the merged firm invades.⁷⁸⁶

422. Further, by reducing the risk and costs associated with entry into SBC and Ameritech territories, particularly with respect to residential and advanced services markets, other conditions stimulate entry into these markets, thereby offsetting the loss of probable competition between the Applicants resulting from the merger. Several conditions lower the entry barriers in the SBC and Ameritech regions, especially for residential competition. For example, we anticipate that the carrier-to-carrier promotions for residential service will spur other entities to enter these markets and establish a presence in residential markets that can be sustained after expiration of the promotional discounts. In addition, SBC/Ameritech's most-favored nation obligations, which covers certain arrangements that the company obtains as a competitive LEC outside its region as well as arrangements imported from other in-region states, and its agreement to enter into multi-state interconnection agreements should assist competitors in entering new markets within the SBC/Ameritech region. Similarly, the Carrier-to-Carrier Performance Plan will provide competing carriers with additional protections by strengthening

⁷⁸⁶ See SBC/Ameritech July 24 Application, Description of the Transaction, at 24-25 (suggesting that implementation of the National-Local Strategy will stimulate competitive responses by other carriers, including other incumbent LECs); SBC/Ameritech Nov. 16 Reply Comments at 14 (predicting that SBC/Ameritech's out-of-region expansion would result in retaliation by the affected incumbents).